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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/088,874	06/11/2002	Yasuo Tano	112372	4957
7590 Oliff & Berridge P O Box 19928 Alexandria, VA 22320			EXAMINER NGUYEN, VI X	
			ART UNIT 3734	PAPER NUMBER
			MAIL DATE 04/16/2008	DELIVERY MODE PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

# Office Action Summary

## Application No.

10/088,874

## Applicant(s)

TANO, YASUO

## Examiner

Victor X. Nguyen

## Art Unit

3734

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 26 December 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 12-15 and 18-27 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 12, 19-25 and 27 is/are rejected.
- 7) ☒ Claim(s) 13-15, 18, 26 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/808)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

**DETAILED ACTION**

1. This amendment filed 12/26/2007, with respect to claims 12-15 and 18-27 are acknowledged. However, upon further consideration, new rejections are made below.

***Claim Rejections - 35 USC § 103***

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 12 and 19-25 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sher (5,556,417) in view of Sher (5,171,254).

Sher discloses a holding device having an eyelid opening portion with two portions 22 for pulling open eyelids, a holding portion 61 which is frosted with a phosphorescent material and has a chamfered bottom portion as shown in fig. 2a, the holding portion is capable of holding a contact lens on the eyeball and is located in an open space between the two portions of the eyelid opener portion; and a connecting portion (34-36,38,40,42 and 44) that connects the holding portion 61 to the eyelid opener portions and which includes an elastic spring member 38 that extends across at least some of the open space. The spring would allow for movement of 61 relative to 22 while maintaining a connected state. Sher ('417) is silent regarding the connecting portion comprises a pair of elastic closed loop members.

Sher ('254) teaches that any type of alternative equivalent mechanical attachment mechanism could be used to secure the ring 61 to the eyelid openers (see col. 3, lines 13-27). Sher even goes on stating that a hook and loop or Velcro, mechanism could be used. Thus, it

would have been obvious to one having ordinary skill in the art at the time the invention was made to modify Sher '417 by making the device has a pair of elastic closed loop members as taught by Sher '254 for any mechanical attachment mechanism that is suitable for attaching the ring to the eyelid openers, because one of ordinary skill in the art would have been able to carry out such a substitution, and the results were reasonably predictable.

Claim 27 is rejected under 35 U.S.C. 103(a) as being unpatentable over Sher (5,556,417) in view of Sher (5,171,254) and further in view of Waller (4,145,013).

Sher '417 in view of Sher '254 discloses the device substantially as claimed except for the pair of elastic closed members have holes to be engaged with the engaging portion. Reversing the connection of the connecting portion to the engaging portion such that 44 went on the outside of the tubular extension of 61 instead of inside which it would have been a mere obvious reversal of known parts.

#### ***Allowable Subject Matter***

3. Claims 13-15, 18 and 26 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

As allowable subject matter has been indicated, applicant's reply must either comply with all formal requirements or specifically traverse each requirement not complied with. See 37 CFR 1.111(b) and MPEP § 707.07(a).

#### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Victor X. Nguyen whose telephone number is (571) 272-4699. The examiner can normally be reached on M-F (8-4.30 P.M).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Ho Jackie can be reached on (571) 272-4697. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Kevin T. Truong/  
Primary Examiner, Art Unit 3734

Victor X Nguyen  
Examiner  
Art Unit 3734

VN  
4/11/2008

